Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of	)	**MM Docket No. 99-153**
	)	
READING BROADCASTING, INC.	)	**File No. BRCT-940407KF**
	)	
For Renewal of License of Station WTVE(TV), Channel 51, Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS CORPORATION	)	**File No. BPCT-940630KG**
	)	
For Construction Permit for a New Television Station On Channel 51, Reading, Pennsylvania	)	

To: Administrative Law Judge Richard L. Sippel

READING BROADCASTING, INC.'S REPLY TO ADAMS COMMUNICATIONS CORPORATION'S OPPOSITION TO MOTION TO ENLARGE ISSUES (MISREPRESENTATION / LACK OF CANDOR)

Thomas J. Hutton
C. Dennis Southard IV

HOLLAND & KNIGHT LLP
2100 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20037
(202) 955-3000

Counsel for Reading Broadcasting, Inc.

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SUMMARY

In its Motion to Enlarge Issues, Reading Broadcasting, Inc. ("Reading") identified numerous instances of misrepresentation made by Adams Communications Corporation ("Adams") during the course of these proceedings. Those misrepresentations raise serious doubts about Adams' candor, requiring further inquiry under an added misrepresentation / lack of candor hearing issue.

In opposition, Adams merely proffers strained explanations of its misrepresentations that are, themselves, incredible, inconsistent with the totality of the evidence, and unsupported by any credible evidence. Where the ability to create an explanation exceeds even Adams' broad imagination, Adams suggests that the misrepresentations were actually Reading's fault for having asked unclear questions, failing to ask the right question, or failing to apprise the witness that the testimony is inconsistent so that it might be modified. Finally, Adams ignores the proper standard for adding an issue – whether the inconsistencies raise sufficient doubt such that further inquiry is called for – and asserts, under the more stringent standard for making findings on a hearing issue, that the evidence, as recast by Adams, does not support a conclusion that Adams dissembled.

As demonstrated below, Adams' opposition does not resolve the substantial questions raised. Further inquiry into those questions is called for.

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I. INTRODUCTION

In the opening to its Opposition to Reading's Motion ("Opposition"), Adams attempts to deflect the focus of this inquiry from its misconduct and redirect it onto Reading by implying that Reading has succumbed to the "all but irresistible" desire to secure its license by sticking Adams with a misrepresentation or lack of candor finding and that, toward that end, Reading has over-inflated the significance of Adams' misrepresentations. (Adams' Opposition at 1-2.) In that regard, Adams urges that its misstatements are so insignificant, or are merely the result of carelessness, exaggeration, or faulty recollection, that they do not warrant disqualification. (Id.)

Given the manner in which Adams unequivocally espoused and then casually renounced various claims during the course of these proceedings, such a cavalier attitude toward misrepresentations is, perhaps, to be expected. Nevertheless, misrepresentation to this tribunal is a serious matter and Adams' invitation to disregard those "misstatements" should soundly be refused.

Adams itself has previously expressed the following view:

> For more than 50 years, it has been fundamental Commission law that, as a federal agency charged with regulation of thousands of entities comprising the nation-wide communications industries, the Commission can and must rely on the complete honesty and candor of its regulatees. See FCC v. WOKO, Inc., 329 U.S. 223 (1946). The Commission's processing staff cannot be expected to examine under a microscope each and every representation placed before it, searching for any possible omissions or inaccuracies. Rather, it is the applicant's job to provide all relevant information in a full and forthright manner. Where, as here, an applicant has chosen to tell the Commission significantly less than the whole story about the applicant's history, and has apparently made affirmative efforts to direct the Commission away from that whole story, inquiry into the applicant's conduct is

> important to maintain the integrity of the Commission's regulatory process.

November 3, 1999 Opposition of Adams Communications Corporation To "Request For Permission To Appeal" at 3-4.

The cases cited by Adams do not support its present position. In Fox River Broadcasting, Inc., 88 FCC 2d 1132 (Rev. Bd. 1982), a misrepresentation/lack of candor issue was designated due to testimonial discrepancies. The issue was only resolved in the applicant's favor after the Review Board found "essential consistency in the record." Id. at 1139. WADECO, Inc. v. FCC, 628 F.2d 122 (D.C. Cir. 1980), affirmed a disqualification based on the applicant's lack of candor before the Commission. Adell Broadcasting Corp., 57 RR 2d 307 (Rev. Bd. 1984), involved an insignificant testimonial error, in which the principal of the applicant erroneously stated that a person had never been a director of the company, when in fact he had been elected a director but the election was reconsidered and rescinded by the stockholders within a week.

Despite Adams' suggestion to the contrary, "no one is allowed 'one bite' at the apple of deceit." Grenco, Inc., 39 FCC 2d 732, 737 (1973). Commission policy is to designate a misrepresentation/lack of candor issue where an applicant's testimony raises a substantial and material question as to the applicant's truthfulness. See, e.g., Breeze Broadcasting Co., 8 FCC Rcd 1835, 1840 (Rev. Bd. 1993) (proceeding remanded where husband and wife testified differently as to her broadcast experience, raising questions as to the "applicant's propensity to be truthful in dealing with the Commission," quoting San Joaquin Television Improvement Corp.,

2 FCC Rcd 7004, 7005 (1987)); Frank Digesu, Sr., 7 FCC Rcd 5459 (1992) (proceeding remanded to determine whether a claim of full-time past broadcast experience was intentionally misleading and deceptive); William M. Rogers, 92 FCC 2d 187, 199 (1982) ("above all, when a licensee is called before the Commission, the Commission must be able to rely upon the representations made by that licensee during the hearing process").

Adams also suggests that, in virtually every case, an ingenious attorney can come up with ways to attack a witness's testimony at the conclusion of the case. (Adams' Opposition at 1.) While Reading's counsel certainly appreciates the compliment, it is wholly undeserved, because cataloging Adams' numerous misrepresentations in this case was more a matter of endurance than ingenuity. In any case, the compliment is easily returned; Adams' counsel has clearly demonstrated a high level of ingenuity in his attempts to rationalize Adams' numerous misrepresentations. However, those efforts are unavailing because the conflicts are too stark and too numerous to overlook.

II. ARGUMENT

A. The WTVE Challenge

During the course of these proceedings, Adams has changed its stated reason for filing its application for Channel 51 in Reading, Pennsylvania. Initially Adams claimed that it filed for public interest reasons, as part of a crusade against home shopping programming, in order to obtain a Commission precedent. (Reading's Motion at 3-6.) When it appeared that such reasons might result in an abuse of

process finding against it, Adams revised its statement of purpose to assert that the real reason it pursued the comparative application process was because that process affords a competing applicant the opportunity to obtain a television station at a "bargain price." (Id. at 6-8.) As demonstrated in Reading's Motion, Adams' "bargain price" claim is nothing more than a desperate fabrication offered in the hope of escaping the noose of its prior asserted intent of obtaining a Commission precedent by challenging home shopping programming. Faced with lying or losing, Adams was clearly motivated to fabricate this new position. Moreover, Adams' "new" original intent is itself clearly inconsistent with the totality of the evidence. Adams' mid-course reversal, therefore, raises sufficient doubt as to Adams' candor to warrant further inquiry. (Id. at 8-13.)

1. Adams Initially Claimed that it Filed to Oppose Home Shopping Programming.

In its opposition, Adams argues that the idea that it ever maintained that its primary purpose in filing its application was anything other than to obtain a television station "is ludicrous and flatly inconsistent with the record." (Adams Brief at 2.) That Adams originally claimed that its primary purpose in filing its application was for public interest reasons, as part of a crusade against home shopping programming, in order to obtain a Commission precedent is, however, neither "ludicrous" nor is it "flatly inconsistent with the record." (See October 14, 1999 Deposition of Howard Gilbert ("Gilbert Depo.") at 14:9-17:17 (pertinent excerpts of the Gilbert Depo. are attached to Reading's Motion as Exhibit A); (November 22, 1999 Declaration of Howard Gilbert ("Gilbert Decl."), ¶¶ 7-11 (the

Gilbert Decl. is in the record as Reading Hearing Ex. 24); November 22, 1999 Opposition of Adams Communications Corporation to Reading's Motion to Dismiss Adams' Application, or Alternatively, to Enlarge Issues (Abuse of Process) at 8; (Gilbert Testimony, Hearing Transcript ("Tr.") at 1114:25-1115:13, 1118:2-1119:4, 1124:20-25, 1132:7-20.) In fact, shortly after hearing Gilbert's January testimony, the Presiding Officer specifically found that Gilbert "confirmed under oath that Adams' sole interest in prosecuting its application is to remove home shopping from all of broadcasting because in Adams' view it is economically impossible to provide public service broadcasting on a home shopping channel." Contrary to Adams' protestations, this finding is neither "ludicrous" nor "flatly inconsistent with the record."

Adams also argues that it has always claimed that its primary purpose in filing its application was to acquire WTVE. In support of that argument, Adams relies on out-of-context statements by Gilbert that Adams intends to win the suit and operate the station. (Adams' Opposition at 4-6.) However, those statements do not override the changes in Adams' position. First, those statements were made in response to questions concerning Adams' interest in settlement. It is certainly no surprise that Adams, knowing that filing for the purposes of extorting a settlement is an abuse of process, would claim that it intends to operate the station if it wins. Second, the assertion that Adams intends to win this suit and operate the station does not answer the question about "why" it filed in the first place.[1] Thus, Adams'

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[1] Adams suggests that RBI failed to ask the right questions at Gilbert's deposition and that, if it had, Adams proffers what Gilbert might have said. *(footnote continued)*

statements that it intends to win, with the concomitant obligation to operate the station, does not demonstrate, as Adams claims, that it did not file for the purpose of obtaining a Commission precedent. To the contrary, Adams' intention to win the suit is wholly consistent with Gilbert's plain and adamant testimony that Adams filed its application for public interest reasons, as part of a crusade against home shopping programming. Adams' "bargain price" rationale was only asserted after it became clear that the public interest rationale would not work.

2. Adams' Current Claim that it Filed to Obtain a Station at a "Bargain Price" is Inconsistent with the Totality of the Evidence and Requires Further Inquiry

Faced with the apparent likelihood that its originally stated public interest purpose would result in an adverse abuse of process finding, Adams claimed that its true purpose in pursuing the comparative renewal application process had always been to obtain a station at a bargain price. (Supplement to Answers of Adams Communication Corporation to Interrogatories, filed May 16, 2000, at 3; Gilbert Testimony, Tr. at 2467:14-2469:5.) In addition to being directly contrary to its original "public interest crusade" testimony, Adams' "bargain price" claim is inconsistent with the totality of the evidence. Thus, for example, if, at the time it filed its application here Adams' true principal interest was to acquire a station at a bargain price, why not first look to see if a station might simply be bought outright for a bargain price? Why not look to challenge a more valuable property (i.e., a

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(Adams' Opposition at 3.) What Gilbert might have said in response to some hypothetical question Adams believes Reading should have asked, coming as it does well after the fact, is certainly not evidence of anything.

"home shopping" station in a more profitable market), thereby obtaining an even greater "bargain"? Why abandon, after a decade of litigation and on the verge of success, the station they had – Channel 44 in Chicago? The facts that Adams did not first seek to buy a station, did not seek a more valuable target, and did abandon Channel 44, all refute its assertion that it filed its application here for the primary purpose of acquiring a station at a bargain price.

Adams has offered no reasonably credible explanation in response to these inherent inconsistencies. Thus, with respect to not having looked into buying a station, Adams now claims that buying a station was inconsistent with Adams' goal of acquiring a television station at a bargain-basement price. (Adams' Opposition at 7-8.) In fact, the only thing inconsistent with buying a station is Adams' previously-asserted interest in obtaining a Commission precedent. Howard Gilbert testified under oath in January that buying a station would not have advanced Adams' public interest goal of obtaining a precedent against home shopping programming. Tr. 1114:25 – 1115:13, 1118:2-1119:4, 1124:20-25. See also Opposition of Adams Communications Corporation to Reading's Motion to Dismiss Adams' Application, or Alternatively to Enlarge Issues (Abuse of Process)" at 8: "Adams' principals have uniformly testified that they chose to challenge RBI's renewal because they do not and did not believe the home shopping television format serves the public interest." Adams cannot square this testimony with its current claim that: "The record evidence is clear that, from a financial perspective, the notion of buying a station was inconsistent with Adams's goal of acquiring an authorization at a bargain-basement price." Adams' Opposition at 8.

Adams' current explanation of seeking a bargain is not only inconsistent with Gilbert's prior testimony, it is also wholly self-serving and totally without evidentiary support. Since Adams never sought to value or price *any* stations, *anywhere*, there is no basis for it to say that it could not have bought a station at a better value to cost ratio than it might obtain through the comparative renewal application process (and without the inherent risk of spending the money and coming away empty). The point is that, if they were really intent on merely obtaining a television station at a bargain, logic and sound business sense would suggest that they would have at the very least looked into the possibility of an outright purchase. The fact that they did not do so casts serious doubt on their belated claim of filing here in order to acquire a television station at a bargain price.

Adams also suggests that the fact that it did not file its application against a more valuable property is meaningless since "Adams' choices of home shopping targets were limited to those stations whose renewal applications were coming due." (Adams' Opposition at 9.) Reading's Motion assumed that the relevant universe of stations subject to challenge was the group of stations coming up for license renewal. Motion at 9. The point is that Adams didn't even make an effort to determine which stations, of those coming up for renewal, presented the best bargain – the greatest potential value for expected cost to obtain. Adams, instead, simply went after the first (Marlborough, Massachusetts) and next (Reading, Pennsylvania) home shopping station to come up for renewal. Tr. 1119:7 – 1124:9, 1065:21 – 1066:3. If the Adams principals were truly intent on obtaining a television station at a bargain, as they now claim, logic and sound business sense

would suggest that they would have looked into filing their comparative application against the most valuable property coming up for license renewal. Instead, Adams filed against a station that had recently been in bankruptcy, for the sole reason that it was next in line for license renewal.[2] These circumstances seriously undermine Adams' current claim that it filed here in order to acquire a television station at a bargain price.

Finally, Adams fails to even address the import of its abandonment of Channel 44. Instead, Adams attacks a "straw man" by claiming that Reading is asking the Presiding Officer to reconsider the Commission's approval of the Channel 44 settlement. (Adams' Opposition at 9.) That is not the case. Rather, Reading is pointing to extrinsic evidence that is inconsistent with Adams' current explanation of its motivations.

As shown in Reading's Motion, Adams/Monroe, after more than a decade of litigation and with only Video 44's appeal left to contend with, gave up its pursuit of that television station license in exchange for a substantial payment without ever operating the station and almost immediately thereafter began its pursuit of a

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[2] As a classic "red herring," Adams cites an option price of $40 million in an affiliation agreement executed several years after Adams filed its application. Adams' Opposition at 8 n.4. That option price could not have been a factor in Adams' decision because it did not exist when Adams filed its application. Mr. Gilbert's January testimony was clear – he did not examine the station's profitability because "we weren't interested in that. We were a public interest case." Gilbert Testimony, Tr. At 1065:21-24. *See also* Tr. 1066:4-7 (Adams did not research the value of WTVE or the potential construction permit). Adams' new explanation of seeking a bargain presents the question of why Adams did not seek the best bargain. Adams has elected not to answer that question.

"home shopping" station to challenge. But why, if Adams' desire was to own and operate a television station, as it now claims, did it give up the station it had? Lack of available Spanish language programming? Certain there were other types of programming available, as Gilbert acknowledged, but Adams never even considered alternate programming. (Gilbert Testimony, Tr. 1129:10-1131:13.) Nevertheless, Adams would have us believe that it desired a television station so much that it was willing to recommence the arduous, lengthy, and uncertain comparative renewal application process without even considering whether it could make a go of Channel 44.[3]

Gilbert's own testimony contradicts this claim. Gilbert testified that the Channel 44 case was "highly successful from our point of view." Tr. 1116:3. In doing so, Mr. Gilbert expounded at length on the public interest impact of the Channel 44 case and the public interest implications of this case. Tr. 1115:3-1119:4. Clearly, had Adams' "point of view" been directed at operating a television station obtained at a bargain price, the Channel 44 case would have been deemed a failure because they won the authorization but never operated the station.

Adams' shifting explanations, combined with extrinsic evidence contrary to its current explanation, require the designation of a misrepresentation/lack of candor issue. Adams' contention that it was seeking a bargain-basement deal is directly contrary to Mr. Gilbert's January testimony, which Adams fails to address,

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[3] And, it should be noted, without ascertaining whether Spanish language programming would be available to it if it was successful in its new undertaking.

much less explain. Either Adams was misrepresenting its motivation earlier (Adams was on a public service crusade, and buying a station would not have advanced that crusade), or it is misrepresenting its motivation now (Adams was seeking a bargain, and buying a station would not have resulted in a bargain). Either situation warrants a misrepresentation issue, particularly in light of Adams' inability to offer a credible explanation for this turnaround.

B. Dealings with Telemundo

As demonstrated in Reading's Motion, Adams engaged in numerous and recent dealings with Telemundo concerning settlement and programming. (Reading Motion at 14-18.) Throughout the course of these proceedings, Adams concealed, equivocated, and lied about its dealings with Telemundo. (Reading Motion at 18-32.) While now conceding its dealings with Telemundo, Adams seeks to excuse its prior misrepresentations and lack of candor by suggesting that its dealings were only "minimal, non-substantive and non-productive." (Adams Opposition at 12.) While the parties may differ as to whether the dealings were numerous and substantial or minimal, non-substantive and non-productive, the fact is that there were clearly dealings; Adams' prior testimony that there were *no* dealings regarding a potential settlement or a potential affiliation agreement, is, under either interpretation, plainly false. Adams' misrepresentations and lack of candor concerning its dealings with Telemundo raise sufficient doubts about Adams' candor to warrant designation of the requested misrepresentation / lack of candor issue.

1. Appraisal and Settlement

Beginning with Gilbert's October 1999 deposition[4] and continuing in Gilbert's November 22, 1999 Declaration,[5] Adams plainly sought to mislead Reading and this tribunal about the scope and nature of its dealings with Telemundo concerning the possibility of settlement. (Reading's Motion at 18-20.) Then, in January, in his testimony in this case, Gilbert flatly lied about Adams' dealings with Telemundo concerning the possibility of settlement:

Mr. Hutton: Was the appraisal being discussed for the purposes of a potential white knight settlement?

Mr. Gilbert: Not from our point of view.

Q: Was it presented by Telemundo's representative for that purpose?

A: There were never any settlement discussions, no.

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[4] On October 14, 1999, Gilbert vaguely referred to Telemundo and then quickly recanted the reference. (Gilbert Depo. 21:21-22:13. ("I just don't remember. I'm not even sure it was Telemundo. But I just dismissed it pretty much out of hand.") In its opposition, Adams congratulates itself on Gilbert's "volunteering" the identity of Telemundo in his deposition. (Adams' Opposition at 17.) However, Telemundo was the subject of questioning in depositions preceding Gilbert's deposition. See Exhibits 1 and 2. Given that the deposition came only three months after Gilbert's own discussions with Telemundo, his equivocal testimony about Telemundo, voluntary or not, was false and misleading.

[5] In the Declaration, which was offered to refute the contention that Adams was interested in obtaining a settlement, Gilbert nowhere mentions Telemundo, but does say that "Adams has never sought any settlement." (Gilbert Decl., ¶ 9.) Adams explains that, technically, this statement is accurate since Adams never, itself, *"approached"* anyone in an effort to settle the case. (Adams' Opposition at 18-19.)

Q: So it's your testimony that [the appraisal] had nothing to do with a potential settlement?

A: Not from my point of view it didn't.

The Court: Wait a minute. That's not a response to the answer, I mean not from your point of view it didn't.

What knowledge did you have of a possible settlement opportunity or settlement proposal coming from somebody other than Parker at this time? Any knowledge at all that you had?

Mr. Gilbert: None.

Q: Absolutely none whatsoever? Is that your testimony?

A: That's my testimony.

(Gilbert Testimony, Tr. at 1099:2-7, 1101:22-1102:9 (emphasis added).)

The facts that developed during Ms. Swanson's testimony in June, however, plainly show that there were a number of discussions about the possibility of settlement between her, on behalf of Telemundo, and Gilbert and Mr. Cole, on behalf of Adams. (Swanson Testimony, Tr. at 2215:8-2217:6, 2219:3-2224:18, 2225:18-2226:9, 2230:17-2231:4, 2268:6-2274:7, 2284:10-2285:5, 2301:16-2302:14; Ms. Swanson's handwritten contemporaneous notes ("Swanson Notes") at 4-5, 10-11 (Ms. Swanson's Notes are in the record as Reading Hearing Ex. 52); Dow Lohnes & Albertson Telephone Report for April 30, 1999 (a copy of the Telephone Report is in the record as Reading Hearing Ex. 51, p.2); Letter from Gilbert to Ms. Swanson dated April 22, 1999 (a copy of that Letter is in the record as Reading Hearing Ex. 57); Swanson Daytimer for July 16, 1999 (the July 16, 1999 entry is in the record as Reading Hearing Ex. 54, p.4.))

Adams takes Reading to task for allegedly mischaracterizing Ms. Swanson's testimony and relying on the Swanson Notes and contemporaneous e-mails by Ann Gaulke, the Telemundo official most directly involved in the settlement efforts. However, Ms. Swanson authenticated her Notes and repeatedly claimed to have no independent recollection of the conversations reflected in the Notes. *See, e.g.,* Tr. 2208:20-24; Tr. 2209:5-2210:10; Tr. 2217:2-11; Tr. 2218:16-25; Tr. 2219:12-17; Tr. 2220:11 - Tr. 2221:8; Tr. 2224:19-24; Tr. 2225:3-24; Tr. 2227:17-2229:12. Clearly, the Swanson Notes and Gaulke e-mails constitute reliable evidence, consisting of contemporaneous business records produced in discovery by Telemundo. Tr. 2310; see also Federal Rules of Evidence, Rule 803(5) and 803(6) . Due to Ms. Swanson's lack of independent recollection, the Swanson Notes, the Gaulke e-mails and related documentary evidence constitute the best evidence of the dealings between Adams and Telemundo. See Weinstein's Federal Evidence, 803-48: "[A] contemporaneous record is inherently superior to a later recollection subject to the fallibility of human memory."

It is particularly noteworthy that the Gaulke e-mails ignore Mr. Gilbert's settlement posturing, focusing instead on his stated interest in a settlement:

(a) 4/30/99 Ann Gaulke e-mail:

> We contacted Adam's attorney (the overfilers) re: a possible settlement and they said they would be "reasonable." They

agreed to pay for 1/3 of the total appraisal cost which should not exceed $5,000.[6]

(b) 5/27/99 Ann Gaulke e-mail:

> Adams agreed to split the cost of an appraisal with us so that we could look toward reaching a settlement. We expect to get the appraisal back tomorrow or Tuesday. Adams has recently contac[t]ed our counsel at Dow, Lohnes to inquire as to a settlement offer and are requesting a meeting with Dow, Lohnes to discuss. This is a good sign. (Interestingly, Adam Lindemann said that he had tried to contact Adams re: a settlement and that they were not interested).[7]

These e-mails clearly demonstrate Adams' interest in a settlement offer from Telemundo and show how deceptive Adams has been in its denials. See, e.g., Gilbert Decl. at 4:

> I am also aware that, on at least one occasion in 1995, the FCC did afford pending applicants an opportunity to settle on a for-profit basis. Since Adams is not interested in any settlement, Adams did not attempt to take advantage of any such opportunity. In fact, Adams has never approached RBI – or anyone else – seeking to settle this case, nor does Adams have any intention of doing so. While Adams has never sought any settlement, RBI has offered to pay Adams to dismiss the Adams application. In keeping with its unwillingness to enter into any settlement, Adams summarily rejected RBI's offer.

Adams claims that Gilbert's Declaration was technically accurate, because other parties (including Telemundo) initiated the discussions with Adams rather than vice versa. Adams Opposition at 18. Adams is implicitly conceding that in crafting this statement, Gilbert deliberately withheld any disclosure of his dealings

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[6] Reading Motion, Exhibit C (recapitulating the discussion memorialized in the Swanson Notes at 5, including the quoted statement by Howard Gilbert that "[o]ur people are reasonable").

[7] Reading Motion, Ex. D.

with Telemundo. This constitutes a lack of candor, and the statement about "unwillingness to enter into any settlement" is a plain misrepresentation. See Edwin A. Bernstein, 6 FCC Rcd 6841, 6842 (Rev. Bd. 1991) (a "technically correct" but misleading pleading response requires a remand on a misrepresentation/lack of candor issue because a license applicant has a duty to go beyond that level and not force the Commission (and opposing parties) to "play procedural games. . . in order to ascertain the truth" (quoting RKO General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981)).

The second Gaulke e-mail also provides the identity of the unnamed man who was the subject of Gilbert's deposition testimony:

> Q: The more recent approach to you about settling the case, do you recall when that occurred?
>
> A: You mean Parker's?
>
> Q: No, no, the other group that you couldn't remember.
>
> A: Nobody ever offered to settle the case. The only offer I ever had to settle the case was Mike Parker's for 250.
>
> Q: Maybe I misunderstood. I had thought that the other party [besides Parker] that approached you was interested in disposing of your application and acquiring the station; is that correct?
>
> A: They said they wanted to talk to Parker and to us about it.
>
> * * *
>
> Q: Was that a face-to-face meeting?
>
> A: No. It could have been Parker and another guy for all I know. It was a phone call.
>
> * * *

Q: Where was it left at the end of that phone call?

A: Nothing ever came of it. I told him I wasn't interested, but I never got a second phone call.

Q: Do you recall any other discussions with any party outside of Adams Communications about a potential settlement of the case?

A: None.

Gilbert Depo. at 23-24.

This questioning followed Gilbert's testimony about a settlement approach by a party he couldn't remember ("I just don't remember. I'm not even sure it was Telemundo. But I just dismissed it pretty much out of hand. I just don't remember. It might have been Telemundo and somebody else. I just don't remember."). Gilbert Depo. At 22. Clearly, the "guy" Gilbert testified about is not Ms. Swanson. The Gaulke e-mail identifies this "guy" as Adam Lindemann, a principal of a Spanish-language broadcasting company, and corroborates Gilbert's claim that he dismissed Lindemann's phone call out of hand. Clearly, when Gilbert testified that he participated in no settlement discussions other than those with Parker and Lindemann, he was lying.

When Gilbert was asked about his dealings with Telemundo in January, he acknowledged Adams' participation in the appraisal (which had surfaced through Reading's litigation through Telemundo), but he flatly denied that the appraisal was connected to a potential settlement or even that Adams had discussed a potential settlement with Telemundo. *Supra* at 13. Again, this was a lie.

Adams claims that its failure to produce the appraisal of WTVE in discovery was an "inadvertent oversight." Adams' Opposition at 18.n.14. However, the appraisal was required to have been produced in Phase I of this case, prior to the depositions of Gilbert and the other Adams principals. See Reading's First Motion for Document Production (filed August 23, 1999), category 4: "Any documents regarding Reading or its officers, directors and/or stockholders or television station WTVE (except for any documents produced by Reading pursuant to a public file request or document request)." Adams objected to this category of documents, but the Presiding Officer, after a prehearing conference, ordered the production of those documents. See Order, FCC 99M-51 (released September 14, 1999). Adams had received the appraisal of WTVE just a few months earlier, but did not produce it to Reading as required. This failure to produce the appraisal is entirely consistent with Adams' effort to conceal its dealings with Telemundo.

Adams now concedes that there were settlement discussions with Telemundo, but tries to excuse Gilbert's prior false testimony that "there were never any settlement discussions" with the rationalization that, from his point of view, they were not discussing settlement.[8] (Adams' Opposition at 19-20.) Adams claims that since Adams' settlement discussions with Telemundo were only "minimal, non-

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[8] Of course, everyone now agrees that Adams and Telemundo were discussing settlement, so, when Gilbert now asserts that he was telling the truth when he said they were not discussing settlement because, from his point of view, they weren't, what did he think they were discussing? It defies credulity that Gilbert, a successful, experienced attorney, did not understand that Ms. Swanson was discussing a potential settlement with him.

substantive and non-productive," Gilbert was telling the truth when he said that there were ***no*** settlement discussions. However, it is the discussions with Parker and Lindemann, rather than the discussions with Telemundo, that were "minimal, non-substantive and non-productive." Gilbert was willing to testify about his discussions with Parker and Lindemann because those discussions did not make Adams look like a "greenmailer," to use Telemundo's terminology. The discussions with Telemundo, which were serious enough to warrant participation in a joint appraisal of WTVE, were kept hidden until the existence of the appraisal became undeniable.

No matter how Adams tries to spin it, some does not equal none. The totality of the evidence clearly shows that there were settlement discussions between Telemundo and Adams. Gilbert's testimony that "[t]here were never any settlement discussions" and that he had no knowledge whatsoever of a possible settlement opportunity or settlement proposal coming from somebody other than Parker was plainly, knowingly, false. Considering that it was given to refute charges that Adams was a "greenmailer," the misrepresentation was clearly motivated by an intent to deceive. Adams' misrepresentations about its settlement discussions with Telemundo, as fully described in Reading's Motion and further explained above, raise substantial and material questions about its candor in these proceedings.

2. Telemundo Programming

In addition to lying about its settlement discussions with Telemundo, Adams has also lied about its dealings with Telemundo concerning programming. Thus, at his deposition in October 1999, Gilbert unequivocally testified:

> Mr. Hutton: Have you ever had any discussions with Telemundo or any other programmer about providing programming to the station if your application is successful?
>
> Mr. Gilbert: No.

(Gilbert Depo., 22:20-23:2.) Gilbert gave the same unequivocal answer in January 2000:

> Mr. Hutton: Has any representative of Adams ever had any discussions with any programmer about providing programming to the station in the event your application is successful?
>
> Mr. Gilbert: No.

(Gilbert Testimony, Tr. at 1107:11-14.)

The evidence adduced during the examination of Ms. Swanson in June, 2000, however, shows that, not only did Adams *have* discussions with Telemundo about providing programming to the station if Adams' application is successful, Gilbert, himself, *initiated* the discussions. (Swanson Testimony, Tr. at 2277:11-2278:6, 2281:2-2282:19; Swanson Notes at 12, 14; Billing Records (Reading Hearing Ex. 50, p.10.)) Two days after Ms. Swanson testified, Gilbert recanted his earlier denials and confessed that "in several conversations with [Ms. Swanson], I told her (sic) I was interested in an affiliation agreement with Telemundo because I knew our people were interested in Hispanic broadcasting." (Gilbert Testimony, 2504:16-19.) Thus, Gilbert's testimony in October and January that no discussions about

programming ever took place was plainly false and, considering that the discussions occurred less than three months prior to his October 1999 deposition, he most certainly knew that the testimony was false when he gave it. Clearly, Gilbert was attempting to conceal all of his dealings with Telemundo.

Gilbert initially took the position that discussing affiliation was different than discussing programming:

> Mr. Cole: Do you recall in your testimony in January you indicated that you had not engaged in any discussions concerning programming for Adams' proposed station (sic)?
>
> Mr. Gilbert: Yes.
>
> Q: How can you say that when you advised Ms. Swanson that Adams was interested in an affiliation agreement with Telemundo?
>
> A: I don't think that that's – that's not the – when I'm talking about programming, I'm discussing the nature of programs that you would have on a program, rather than an affiliation agreement.

Gilbert Testimony, Tr. 2504:20-2505:8. As demonstrated in Reading's Motion, that excuse does not hold water, particularly in light of Gilbert's January testimony that an affiliation with Univision or Telemundo was necessary in order to put a station on the air with Spanish language programming. Reading Motion at 31.

In its opposition here, Adams offers a different explanation. Adams now asserts that Gilbert was not lying when he testified that there were never any discussions with any programmer about providing programming to the station in the event Adams' application were successful, because "while Mr. Gilbert and Adams expressed to Telemundo Adams's willingness to engage in such discussions

in July, 1999, Telemundo refused to engage in such discussions at all." (Adams' Opposition at 20-21.) Thus, according to Adams, Gilbert's "several conversations" with Ms. Swanson, wherein he told her Adams was "interested in an affiliation agreement with Telemundo because [he] knew [Adams'] people were interested in Hispanic broadcasting" were not *discussions* about providing programming to Adams if its application were to be successful. Apparently, only if Telemundo had agreed to consider affiliating with Adams would there have been *discussions*. Adams' argument is patently absurd and only further serves to demonstrate its lack of candor. The fact that Telemundo ultimately rejected Adams' invitation does not make the invitation itself any less a discussion about providing programming. Again, if Gilbert was able to answer questions about inconclusive one-time telephone calls with Parker and Lindemann, there is no reason he could not have answered questions dealing with an entire series of recent discussions with Telemundo, first about settlement and then about programming. Adams' shifting explanations only serve to confirm that Gilbert deliberately denied his discussions with Telemundo.

Adams' misrepresentations concerning its dealings with Telemundo with respect to programming, as fully described in Reading's Motion and further explained above, raise substantial and material questions about its candor in these proceedings, requiring designation of the requested misrepresentation / lack of candor issue.